

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF: )  
)  
VIRGINIA W. DIEHL, )  
)  
vs. ) No. 01-0453  
)  
THE PEOPLES GAS, LIGHT & COKE )  
COMPANY, )  
)  
Complaint as to alleged tapping) of services and incorrect )  
billing of current services in )  
Chicago, Illinois. )

Chicago, Illinois  
February 26, 2002

Met pursuant to notice at 10:00 a.m.

BEFORE :

DAVID GILBERT, Administrative Law Judge.

APPEARANCES:

MS. KIMBERLY J. ANDERSON  
180 North LaSalle Street, Suite 2400  
Chicago, Illinois 60601  
for Virginia Diehl;

MR. BRIAN MC CARTHY  
130 East Randolph Street, 23rd Floor  
Chicago, Illinois 60601  
for Peoples Gas.

SULLIVAN REPORTING COMPANY, by  
Steven T. Stefanik, CSR

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I N D E X

<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>
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None.

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
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None so marked.

1 JUDGE GILBERT: Pursuant to the authority of  
2 the Illinois Commerce Commission, I now call Docket  
3 No. 01-0453.

4 If I could have appearances for the  
5 record beginning with the complainant.

6 MS. ANDERSON: Kimberly Anderson on behalf of  
7 Virginia Diehl, D-i-e-h-l.

8 MR. MC CARTHY: Brian McCarthy on behalf of the  
9 respondent, The Peoples Gas, Light and Coke  
10 Company, 130 East Randolph Drive, 23rd Floor,  
11 Chicago, Illinois 60601.

12 JUDGE GILBERT: Okay. We have already  
13 conducted some evidentiary hearings in the case.

14 The complainant put on a case on his  
15 own. Then -- respondent then put on its case.  
16 Complainant then requested the assistance of  
17 counsel. That request was granted with the  
18 understanding that all that had been done prior to  
19 that point would be part of our record.

20 Counsel for complainant now has an issue  
21 regarding the order in which we will proceed from  
22 this point.

1                   So I'll turn the floor over to her to  
2 put that on the record.

3       MS. ANDERSON:    It's my understanding that  
4 Mr. Asim put on one witness himself. He rested at  
5 that point in time and his case in chief was over.

6                   Peoples Gas then put on two witnesses  
7 and they rested. And at that point in time -- I  
8 don't know -- due to testimony that was heard or  
9 whatever, Mr. Asim felt at a disadvantage. He  
10 asked for counsel. That was granted.

11                   And when I reviewed the transcript, I  
12 felt a need for an expert witness to refute some of  
13 the stuff that they had said in their case in  
14 chief, Peoples Gas.

15                   I have found that witness. He has  
16 reviewed transcripts and testimony of the other  
17 witnesses and he's ready to testify. However,  
18 Mr. McCarthy is stating that now he wants to call  
19 in another witness.

20                   So it's -- as far as semantics where are  
21 we at in the case? I'm assuming that my witness is  
22 my rebuttal witness or I guess I have no objection

1 to him being considered part of my case in chief,  
2 if I need to reopen my proofs to put him into my  
3 case in chief, and then Mr. McCarthy puts his  
4 witness in as his case in chief.

5 I can hold my witness here that day to  
6 then call him as a rebuttal witness to refute what  
7 Mr. McCarthy's witness has said.

8 But it seems like we're in a  
9 disagreement that Mr. McCarthy wants to be the last  
10 word, and I believe that as the petitioner in this  
11 case or the plaintiff, however it's phrased in this  
12 type of a case, that they typically go first. They  
13 rest. The second side puts on. And then the side  
14 who goes -- you know, is the plaintiff or the  
15 petitioner gets to put on the rebuttal. They go  
16 last.

17 So that's my contention that we want to  
18 be the last person heard on the matter.

19 MR. MC CARTHY: Well, I suppose one way we --  
20 this could be dealt with is to allow what she said,  
21 you know, her witness goes -- her expert, I guess,  
22 goes and then -- then we have some witness -- I

1 need somebody to talk about what that person is  
2 talking about, so we can have sort of both sides of  
3 that technical story. And then, you know, what she  
4 might have is another opportunity to question her  
5 witness again after that.

6 I mean, clearly, you're going to have an  
7 opportunity to cross-examine my witness about what  
8 he's said.

9 MS. ANDERSON: Sure.

10 MR. MC CARTHY: And he's for the most part only  
11 going to be responding -- I mean, I don't  
12 envision -- I haven't talked to my witness. I  
13 haven't even identified one yet; but I don't think  
14 I'm planning on opening this hearing up to new  
15 issues other than, you know, what it is your expert  
16 is going to be discussing or testifying about.

17 But, you know, one possibility is that  
18 she keep her witness here and then she can call him  
19 to rebut. I don't know whether -- that is  
20 something that needs to be decided. I think, at  
21 this point, maybe the thing to do is just to see  
22 what happens and see what the parties will do.

1 MS. ANDERSON: I think we do need to know  
2 what's going to happen.

3 I think we need to know whether this  
4 witness is a rebuttal witness or is in the case in  
5 chief. It's too confusing, otherwise, and we're  
6 left at the hearing --

7 MR. MC CARTHY: Well, it can't be a case in  
8 chief, I guess.

9 MS. ANDERSON: Well, that's my understanding,  
10 too. It really isn't a case in chief because what  
11 he's going to talk about is directly refuting  
12 things that were said in their case in chief.

13 So I really think he's a rebuttal  
14 witness. Then to call their rebuttal witness after  
15 my rebuttal witness is -- I'm saying that his  
16 witness should go first, then my rebuttal witness  
17 should be testifying.

18 MR. MC CARTHY: Yeah, but what would mine  
19 testify about? I mean, that puts the cart before  
20 the horse, I think.

21 MS. ANDERSON: Well, you know from the report  
22 what his findings are or what his testimony is

1 going to be, which leads us kind of to the next  
2 point that we have a controversy about and it kind  
3 of directly ties in is I spoke with counsel  
4 yesterday about disclosing what his opinions would  
5 be, what his expert opinion testimony would be, and  
6 he doesn't, at least the way I understood it, feel  
7 that he has to disclose what the testimony will be.

8               So I said, well, then I will just throw  
9 213(f) and (g) on the table and we take care of it  
10 that way. And he says I don't think I'm under any  
11 obligation to answer them and I believe he is.

12               I mean, if the Code of Civil Procedure  
13 is going to rule in this case, we've already had  
14 discovery in this case. We have had notice to  
15 produce. We've had other interrogatories for us to  
16 disclose what our witness is going to say. And  
17 then to more or less hide the cards and not tell me  
18 what his expert witness is going to say, I think,  
19 puts the Diehls at a disadvantage.

20       MR. MC CARTHY: I guess what I would say is I'm  
21 trying not to make -- draw this out any longer,  
22 this hearing.



1                   These hearings have gone on, I think, ad  
2   nauseum in this case in some ways, and so I'm  
3   trying to make -- to get us this evidentiary  
4   process without having more discovery on things.

5                   The -- I reminded Counsel, when she  
6   mentioned this idea of having a statement about  
7   what my witness was going to testify about, was  
8   that I only asked her for a report because she  
9   mentioned it at the hearing and that's why it was  
10  brought up; that she mentioned she's going to have  
11  another witness and that she had the report right  
12  there.

13                  And so I said, well, I guess I'd like a  
14  copy of that report, if that's possible so we can  
15  always talk about -- but I didn't get a copy of  
16  that report until mid last week. And so we're  
17  going to end up -- you know, obviously we're going  
18  to end up delaying this hearing already to -- for  
19  me to arrange to have a witness. I just don't want  
20  to add -- but, you know, I'll let the Hearing  
21  Examiner, obviously, rule on the issue of whether  
22  we need to produce.

1                   And it looks like 213(f) and (g) are  
2 disclosures regarding the identity and testimony of  
3 witnesses, and the subject -- disclosures on the  
4 subject matter in which the opinion witness is  
5 expected to testify, the conclusions and opinions  
6 of the opinion witness and the basis therefore and  
7 the qualifications of the opinion witness and  
8 provide all reports of the opinions witness.

9                   What's kind of strange here is I'm not  
10 really not offering -- well, it's not.

11       MS. ANDERSON:    213 covers any witness.

12       MR. MC CARTHY:   Right.

13       MS. ANDERSON:    It doesn't matter if it's the  
14 Diehls or whatever. 213 covers all witnesses, even  
15 the parties. So it doesn't matter what he's being  
16 offered for. It doesn't even matter if he's going  
17 to testify to, you know, this room has got blue  
18 seats. It doesn't matter what this opinion witness  
19 says. You have to say who he is and what he's  
20 going to say.

21       MR. MC CARTHY:    Okay.

22       MS. ANDERSON:    It's mandated.

1       MR. MC CARTHY:    We could -- we could provide  
2   that document, once I get a chance to talk with my  
3   witness, and I'll try and do it as quickly as  
4   possible.

5                   I mean, generally speaking, I can tell  
6   you what he's going to testify to right now.  He's  
7   going to deny most of the things in your report --  
8   or your expert's report.

9       MS. ANDERSON:    Well, if that's going to be what  
10   it is.

11       MR. MC CARTHY:   And it's only limited to that.  
12   I mean --

13       MS. ANDERSON:    Then we'll object to anything  
14   that comes out of his mouth that isn't directly  
15   refuting what we say in the report and it should be  
16   barred.

17       JUDGE GILBERT:   Okay.  First of all, let's put  
18   the case into context.  We are in something of a  
19   supplemental phase here.

20                   I could have closed complainant's case  
21   after Mr. McCarthy proceeded, terminated the  
22   evidentiary hearings at that point, because I had

1 repeatedly asked him if he wanted to go forward  
2 without counsel.

3                   That said, while this is a complaint  
4 proceeding, my understanding is that the Company  
5 has the burden of proof with respect to accounts  
6 due and owing. And I cannot quote the reg, but I  
7 recall reading the reg specifically in support of  
8 this case, in my preparation of this case. And I  
9 wish I had my notes with me so I could quote it to  
10 you. I suspect you may, in fact, know it.

11       MR. MC CARTHY:     Right. I do know it.

12       JUDGE GILBERT:     You could probably tell me.

13       MR. MC CARTHY:     Right. I think it's 280.105 or  
14 something.

15       JUDGE GILBERT:     Okay.

16       MR. MC CARTHY:     It shifts -- the way we review  
17 it is they have to allege some level of something  
18 about being billed for tampering, and then we have  
19 to prove the three elements existed.

20                   And what we're getting into here -- you  
21 know, I'm not sure who has -- I mean, I'll leave it  
22 at that. I'll leave it at that.

1 JUDGE GILBERT: Okay.

2 MR. MC CARTHY: This is a strange ground, I  
3 must admit.

4 JUDGE GILBERT: Okay. For Ms. Anderson, it's  
5 probably a strange ground in the sense that our  
6 procedures do not literally mirror what might occur  
7 in the judicial branch.

8 In other kinds of cases here, the  
9 parties file their testimony even before the case,  
10 you know, as written testimony and they file it  
11 simultaneously.

12 In a complaint proceeding, typically, we  
13 proceed more like an Article III case with the  
14 complainant carrying the burden; but because of the  
15 nature of our regulations, as Mr. McCarthy has  
16 agreed, there are elements of the case that the  
17 company carries the burden on. So although you're  
18 the complainant, there are some things that he has  
19 to prove as opposed to you have to prove.

20 So given that posture, that procedural  
21 posture of the case, with respect to how we will  
22 proceed, your witness will start and Mr. McCarthy's

1 witness will follow, which I think is consistent  
2 with the burden of proof in the case.

3 MS. ANDERSON: And no recall?

4 JUDGE GILBERT: No recall. I'm just waiting  
5 while you complete your respective notes.

6 I will just add, were they to be  
7 recalled, that would give the party without the  
8 burden of proof with respect to these issues the  
9 last word and that's, I think, inappropriate.

10 So their witness will have the final say  
11 and you'll have the final cross-examination.  
12 Although I guess you will be permitted to redirect.  
13 So, in a sense, you will have the last word.

14 With regard to discovery, I don't know  
15 what the report is that your witness, Ms. Anderson,  
16 produced, and I don't think I should see it right  
17 now. I don't think it would be appropriate as a  
18 discovery request to require the company to prepare  
19 a report that essentially mirrors in form what your  
20 witness has done.

21 MS. ANDERSON: We're not requesting that.

22 JUDGE GILBERT: Okay. Apart from that, I do

1 think it would be helpful to permit some discovery  
2 by you. Although, Mr. McCarthy, are you also  
3 interested in discovery or would you only be  
4 interested in discovery if the complainant has an  
5 additional opportunity to discover?

6 MR. MC CARTHY: Yeah. Let's put it this way:  
7 If what we're going to get into -- I mean, she's  
8 raised a point.

9 If we're going on her strict Rule 213  
10 and she's seeking to have me -- have my witness  
11 barred from testifying about things he hasn't  
12 stated in a 213(f) or (g) request, then I'm going  
13 to do the same to her in order to -- because I know  
14 I have a report, but that doesn't state that that's  
15 all her person's going to testify about -- her  
16 witness. I'm sorry.

17 JUDGE GILBERT: Is it the position of each of  
18 you that the discovery positions -- provisions,  
19 excuse me, the discovery provisions within the Code  
20 of Civil Procedure used in the judicial branch  
21 would apply here?

22 MS. ANDERSON: Well, I'll be quite frank. I

1 don't practice at the ICC. This is my first case.  
2 I practice solely in civil cases or criminal cases;  
3 but it was my understanding that the rules of  
4 Civil Procedure governed these proceedings. If  
5 they don't, then fine; but I just need to know  
6 where we're at on it.

7 JUDGE GILBERT: Sure.

8 MS. ANDERSON: Because I don't want a witness  
9 who comes in, and as Mr. McCarthy said yesterday,  
10 we're just going to kind of shoot it from the hip  
11 kind of thing and whatever comes out of his mouth,  
12 we're just going to deal with, you know, like  
13 cowboys, fine, you know; but I need to know where  
14 we're at then. I need to know so I'm on the same  
15 page as everybody else and not expecting one thing  
16 and not getting it.

17 MR. MC CARTHY: It's my position I don't  
18 believe -- I don't have 280 -- or Part 200 here  
19 before me, but the rules of Civil Procedure do not  
20 directly apply here. That what in fact is the  
21 case, I think, is that they can be used as  
22 guidance, but that there are rules regarding



1 discovery in Part 200 that govern these cases. And  
2 cases sometimes they do refer to.

3 JUDGE GILBERT: Right. Yeah. And that's my  
4 understanding, too.

5 MR. MC CARTHY: It's sort of like a guide.  
6 They don't want it to be as formal, maybe.

7 JUDGE GILBERT: Yeah, I'll just quote from  
8 200.335 of our rules. For the record, I suspect --  
9 well, in fact, Ms. Anderson, you have a copy of  
10 those?

11 MS. ANDERSON: I've got a couple books here.  
12 I'm trying to -- 200? I'm sorry. What was it?

13 JUDGE GILBERT: 335.

14 MS. ANDERSON: Okay.

15 JUDGE GILBERT: All right. And I'm looking at  
16 the first subsection A, and I'll just read the  
17 first sentence: "Except as otherwise specified in  
18 this section, the provisions of Section 200.340  
19 through 200.430 of this part shall apply fully to  
20 all proceedings before the Commission," and that's  
21 the end of the quote.

22 Because you might not be familiar with

1 it, Ms. Anderson, the next sentence in that  
2 subsection refers to the Illinois Commercial  
3 Transportation Law, which isn't applicable to what  
4 we're doing here and I think is probably not  
5 applicable to much of anything anymore because we  
6 no longer regulate most of those things.

7 In any event, I think --

8 MS. ANDERSON: Would 1 apply also?

9 "Any party may utilize written  
10 interrogatories, deposition or requests commonly  
11 utilized in civil actions in the circuit courts of  
12 the State of Illinois in the manner contemplated by  
13 the Code of the Civil Procedure and the rules of  
14 the Supreme Court of Illinois."

15 JUDGE GILBERT: Well, again, this Subsection B  
16 and the sub-subsections under it are specifically  
17 made applicable to proceedings under the Illinois  
18 Commercial Transportation Law.

19 Take a look if you would at 200.360. I  
20 would think Subsection C of that section is  
21 probably the one that will be of most interest to  
22 you. In practice, the way that is generally

1 applied here is that the discovery mechanisms that  
2 would be available in the Circuit Courts are also  
3 available here.

4 I would think some of the -- some of the  
5 rules developed in the implementation of those  
6 discovery mechanisms such as the rule you were  
7 hoping to invoke which would hold Mr. McCarthy's  
8 witness to the limit of your -- to the limit of his  
9 statement in response to your discovery has  
10 probably not typically been applied here. It  
11 doesn't mean it couldn't be. I just -- typically,  
12 is not.

13 The parameter of the proceedings is  
14 generally more flexible.

15 JUDGE GILBERT: All right. Let's do this:

16 Let me make a little road map for myself  
17 and tell you what I propose to do.

18 Okay. I'll tell you what I propose to  
19 do. I'll certainly listen to any concerns you  
20 might have about this, but let me give you a  
21 proposed game plan.

22 Ten business days for each of you to

1   serve discovery on the other.   Ten business days to  
2   respond.   Five business days for objections to the  
3   other party's responses.

4                   Whether you have objections or don't  
5   have objections, on the sixth business day, call me  
6   and we will either set up a hearing in fairly short  
7   order to discuss your objections or we'll set up a  
8   hearing on the merits of the case.

9       MS. ANDERSON:   The five business days for  
10   objections, what was that for, the objections to  
11   the answers provided?

12       JUDGE GILBERT:   Yes.

13       MS. ANDERSON:   And then you want a call to you  
14   on the sixth business day regardless?

15       JUDGE GILBERT:   Yes.   So that would be on the  
16   26th day.

17                   We'll do ten, ten, five and then one day  
18   thereafter, after the fifth day.   You'll call me.  
19   Hopefully, all three of us will get on the phone at  
20   the same time.   If there have been no objections,  
21   we'll set our evidentiary hearing date.   If there  
22   are objections, we'll set a shorter date to

1 entertain those objections.

2                   A kind of general parameter for  
3 responses: As a matter of course, you're under a  
4 due faith obligation. Because of the nature of the  
5 case, how long it has gone on and because we're  
6 essentially in a supplemental proceeding, good  
7 faith will be the standard by which I will review  
8 any objections to the other party's responses.

9                   I'm not -- while I want you both to do  
10 the utmost in exercising that good faith, I don't  
11 want to protract this with a battle about  
12 objections to answers. So if I've seen good faith  
13 answers, that's going to be good enough.

14       MR. MC CARTHY: One question, just to --

15       JUDGE GILBERT: Hm-hmm.

16       MR. MC CARTHY: Can we limit this discovery to  
17 certain types of discovery, if that's possible? I  
18 don't want to reopen --

19       JUDGE GILBERT: Yeah, it's about the issue that  
20 I think we've been discussing. Again, I've not  
21 seen the report, but the report is about the  
22 purported tappets about the piping itself and the

1 function of that piping and what it might have done  
2 and whom it might have served.

3 MR. MC CARTHY: Yes.

4 MS. ANDERSON: But he is -- so that you know, I  
5 mean, he is going to -- he has reviewed both of the  
6 witnesses' testimony and he is willing, able, I  
7 believe, if I can, you know, set the proper  
8 foundation, to testify regarding comments made by  
9 both witnesses.

10 So it goes beyond the scope of just the  
11 tap itself. I mean, he's going to discuss the size  
12 of the house. He's been inside the house. He's  
13 going to testify about --

14 JUDGE GILBERT: Let her finish.

15 MS. ANDERSON: -- the bill itself and how  
16 irregular it is and off would be a good word; how  
17 it's not accurate.

18 So he's going to do more than testify  
19 just about the actual pipe.

20 JUDGE GILBERT: You don't have to object  
21 because I'm not going to allow that.

22 MR. MC CARTHY: Okay.

1 JUDGE GILBERT: I will not allow that. It's  
2 going to be about the piping and about whether a  
3 tap has occurred.

4 And magnitude of tap, whom it might have  
5 served --

6 MS. ANDERSON: You're not allowing me then to  
7 refute one of the things that they have to show  
8 then which is that the bill is reasonable. We  
9 allowed --

10 JUDGE GILBERT: No.

11 MS. ANDERSON: And I know it was a disadvantage  
12 and I know Mr. Asim went pro se, which is very  
13 unfortunate, but he went in and had two witnesses  
14 testify who weren't even qualified to testify to  
15 what they -- no foundation whatsoever for Mr. Adlai  
16 to testify about backfeeding or any other stuff  
17 that he testified to. Absolutely no foundation.  
18 It should have been stricken right off -- right  
19 off. No way would he have gotten those opinions on  
20 the record. No way.

21 JUDGE GILBERT: Well --

22 MR. MC CARTHY: I think he testified --

1 MS. ANDERSON: Absolutely not.

2 MR. MC CARTHY: -- a long experience as a field  
3 service personnel.

4 MS. ANDERSON: Absolutely not.

5 JUDGE GILBERT: No, I disagree with that. He's  
6 an employee of the Company.

7 MS. ANDERSON: He may be an employee of the  
8 Company, but absolutely no evidence -- no evidence  
9 came in that he had any experience investigating  
10 illegal taps or backfeeding.

11 Absolutely no testimony about his  
12 experience with being able to give an opinion about  
13 backfeeding, about how gas takes the path of least  
14 resistance. No testimony about him being any type  
15 of a person who knows anything about how gas  
16 travels or doing any kind of gas repairs or --  
17 nothing. Absolutely nothing.

18 The other guy gets on. He knows nothing  
19 about how the bill is constructed. He goes off of  
20 the highest bill that he can find and calculates.  
21 He had some underling who didn't have much  
22 experience put the bill together.



1                   I mean, the whole thing is -- I mean,  
2 I'm sorry. It's almost a joke, the testimony that  
3 went on. And you're going to hold this guy to  
4 \$15,000 and the standard is that this bill has to  
5 be reasonable. And who's going to testify that  
6 it's not reasonable? I mean, Mr. Asim? He can't  
7 testify to that. He -- how would he know anything.

8       MR. MC CARTHY: I'm sorry, but what's a plumber  
9 going to know?

10      MS. ANDERSON: He knows based on -- this guy  
11 testified that this was a very large house, mansion  
12 type. I don't know what kind of a house he's been  
13 in before, if this is a mansion type.

14                   This guy's going to testify about the  
15 square footage in the home. He's measured it. The  
16 fact that when you put in a hot water heater and  
17 new windows and new insulation, all of that -- if  
18 he's an expert, he can testify to his expert  
19 opinion on how these types of things affect a gas  
20 bill. These are all things that --

21      JUDGE GILBERT: He, meaning your witness?

22      MS. ANDERSON: Right.

1 JUDGE GILBERT: Okay. Well, let's be clear  
2 about a couple things.

3 His witnesses were not testifying as  
4 experts.

5 MS. ANDERSON: Exactly.

6 JUDGE GILBERT: They didn't have to testify --

7 MS. ANDERSON: But they had lots of opinions.

8 JUDGE GILBERT: They didn't have to testify as  
9 experts and they didn't have to qualify as experts.  
10 Your witness is coming in purportedly as  
11 an expert, so he's going to have to qualify himself  
12 as an expert.

13 As for the shortcomings of Mr. Asim's  
14 case, that was his choice. He's an adult and,  
15 clearly, an intelligent adult. And he was reminded  
16 repeatedly that he had a right to counsel, if he  
17 wanted to seek it, and he chose not to.

18 And what I'm not going to do is permit  
19 him to come in, put on a case that he finds isn't  
20 working and then decide, all right. Now, I want a  
21 counsel to put on a second case. I thought I could  
22 do this for free. It's not working very well. So

1 only at this point after the Company has gone  
2 through its entire case will I now request counsel.  
3 That is not going to be successful here.

4 I think I've bent over backwards to give  
5 him and now you on his behalf an opportunity to  
6 make a case for him. You weren't here when those  
7 other witnesses were here and that's how it is.  
8 That was his choice.

9 Is there any concern about the time  
10 provisions in the case?

11 MR. MC CARTHY: No, not my --

12 JUDGE GILBERT: Okay. Okay.

13 Obviously, there's going to be an  
14 unclear -- well, maybe that's overstating it,  
15 though, it may not be. There's going to be an  
16 indefinite line between what can and cannot be  
17 discovered, what's within the realm of the subject  
18 matter that may be discovered. And I'll deal with  
19 that if either of you raise an objection. If not,  
20 then we'll set a trial date -- or I should say  
21 hearing date.

22 MR. MC CARTHY: I guess I would -- I'm sorry.

1 I didn't know if you were -- I'll let you continue.

2 I'm sorry.

3 JUDGE GILBERT: Thank you for letting me  
4 continue.

5 Okay. Actually, I won't continue. Go  
6 ahead. What do you want to say?

7 MR. MC CARTHY: I was just -- I'd like to at  
8 least try to limit the extent of discovery to  
9 discovery of whatever witness the person is going  
10 to use and the general nature of, I guess, the  
11 subject matter of which the witness is expected to  
12 testify, the conclusions and opinions of that  
13 witness and the basis therefore and the  
14 qualifications of the witnesses or the witness.

15 I guess I just want to keep it --

16 JUDGE GILBERT: Okay.

17 MR. MC CARTHY: -- narrow. I was thinking that  
18 that's what we were talking about.

19 JUDGE GILBERT: Well, that's a bit slippery for  
20 the other side because you don't have a witness yet  
21 and you, I would assume then, don't know what your  
22 witness will be doing.

1       MR. MC CARTHY:   Right.

2       JUDGE GILBERT:   So in a way, they're shooting  
3   at a target that isn't as clear as the target  
4   you'll be shooting at.

5       MR. MC CARTHY:   Right.   That's true.   That's  
6   true.

7       JUDGE GILBERT:   You read the rule there.

8               As you were summarizing, were you  
9   summarizing directly from the rule?

10      MR. MC CARTHY:   Yeah, I believe so.   It was  
11   from 213(f) and (g) which, I think, she quoted  
12   Supreme Court Rule 213(f) and (g).

13      JUDGE GILBERT:   Okay.   Do me a favor.   Just  
14   read it into the record.

15      MR. MC CARTHY:   Oh, okay.

16               "Upon written interrogatory, a party  
17   must furnish the identity and location of witnesses  
18   who will testify at trial together with the subject  
19   of their testimony."   That's Part F of 213.

20               And (g) is, "An opinion witness is a  
21   person who will offer any opinion testimony upon  
22   written interrogatory.   The party must state the

1 subject matter of which the opinion witness is  
2 expected to testify, the conclusions and opinions  
3 of the opinion witness, and the basis therefore and  
4 the qualifications of the opinion witness, and  
5 provide all reports of the opinion witness."

6 JUDGE GILBERT: That seems a bit too narrow.  
7 Yeah.

8 I want to give you a clear set of  
9 instructions as I can. I'm much more concerned  
10 about the scope, about the subject matter of the  
11 discovery than I am about the kind of question --

12 MR. MC CARTHY: Okay.

13 JUDGE GILBERT: -- that you propound to each  
14 other. I mean, I don't want to leave room for  
15 creative lawyering.

16 MR. MC CARTHY: I guess the only concern -- I  
17 think you've made it very clear that the next  
18 hearing is not going to be a reopening of  
19 everybody's case in chief and I guess that's  
20 sufficient as long as we kind of tailor this to --  
21 I just didn't want to receive a whole bunch of  
22 stuff.

1                   I guess I could bring it up in an  
2   objection, but a whole bunch of stuff regarding  
3   things that seem to be --

4       MS. ANDERSON:   I didn't want to start the whole  
5   discovery process again. All I asked was what's  
6   your witness going to say. And he's like, well,  
7   you know, I don't think I have to do that. And I'm  
8   thinking, what do you mean you don't have to do  
9   that?

10      JUDGE GILBERT:   Right.

11      MS. ANDERSON:   It's not --

12      MR. MC CARTHY:   I'm sorry. Initially, you said  
13   you wanted a report from my witness.

14      MS. ANDERSON:   No.

15      MR. MC CARTHY:   I said I'm not going to create  
16   a report just to give it to you.

17      MS. ANDERSON:   And if he thought it was a  
18   report, then I was inaccurate on the phone.

19                   I didn't say he had to come up with a  
20   report; but, generally, you put down in writing  
21   what it is he's going to testify to. Is he going  
22   to testify to, you know, some -- as an example,

1    okay?  Their witness talked about backfeeding, that  
2    this gas would travel down this pipe and all of a  
3    sudden backfeed out through this pipe.  Ridiculous,  
4    okay?

5                    So if there's another word that we're  
6    not aware of, you know -- I don't know -- whooping,  
7    who knows.  I'd like to know what it is so that I  
8    can say to my expert, Have you ever heard of this  
9    term?  You know, what is this?  You know, because  
10   I'm not a plumber.  I don't do gas for a living.  I  
11   have no clue.

12                   The only way I can even remotely prepare  
13   is to know what is he going to say.  Is he going to  
14   say that backfeeding occurred?  Is he going to have  
15   some other weird word I've never heard of before.  
16   That's what I'm looking for.  I want to know what  
17   he's going to say, what's the general testimony of  
18   what he's going to say.  Then I can go to my  
19   witness, my expert, and say give me some background  
20   on this.  Tell me what this is.

21                   I had to sit with him for two hours just  
22   on an education of how gas flows down a pipe.  Who



1 would know, you know? I mean, I can't be caught  
2 totally by surprise.

3 JUDGE GILBERT: Let me stop you at this point  
4 because I don't think that's even an issue. I  
5 think he's -- he has, it seems to me, agreed to  
6 that. By his reading the rule, he's essentially  
7 acknowledged now -- I don't know what your previous  
8 conversations were, but has acknowledged now that  
9 that is a fair game within the rules of discovery  
10 we're setting here.

11 What I'm talking about is something  
12 broader than that where you can inquire as to the  
13 basis for the opinion, for example. I mean, I  
14 might said -- and, you know, I'm not telling you  
15 how to practice your case, but, you know, state  
16 all -- state your rationale. I mean I would  
17 certainly say it better than this, but state your  
18 rationale for your opinion that... Or will you  
19 testify to this? If so, what will be your  
20 rationale for it?

21 You know, I'm obviously wording that  
22 very badly, but I'm going beyond what you're asking

1 for. Is that clear to you or am I missing it?

2 MS. ANDERSON: Yeah, it's clear. And I just  
3 want it to be clear on the record that I'm not  
4 seeking to make this a big huge circus.

5 All I wanted was to know what is his  
6 qualifications so that when my expert can look at  
7 his initials after his name and see ACRL, what is  
8 that. Is he, you know, a journeyman? Does he have  
9 any experience? You know, so I can refute.

10 Since I'm not being allowed to be the  
11 last one, I need to be very counterproductive. I  
12 need to know exactly what's going to be said  
13 basically on the other side so that he can more or  
14 less talk about it in his case, because we don't  
15 have the opportunity to go last, you know.

16 JUDGE GILBERT: Right.

17 MS. ANDERSON: I can't --

18 JUDGE GILBERT: But that's already settled.  
19 That point I've already embedded in what we're  
20 doing. So I'm not sure what we're --

21 MS. ANDERSON: Okay.

22 JUDGE GILBERT: -- still discussing.

1 MS. ANDERSON: I just didn't want -- it's --  
2 maybe I'm off, but it just seemed to me that he's  
3 concerned that I'm going to start like, you know,  
4 give me the basis of how you calculated the bill.

5 No. I mean, I'm not going into all of  
6 that again.

7 MR. MC CARTHY: Okay. But you made it sound  
8 like your witness was going to go into that and  
9 that's all I'm trying --

10 JUDGE GILBERT: That was my impression, too,  
11 what Mr. McCarthy just said.

12 MR. MC CARTHY: Right.

13 JUDGE GILBERT: Yeah. And that's what I don't  
14 want to occur.

15 What I think we're talking about now is  
16 whatever apparatus or equipment was in place and  
17 what it was doing and whether or not it benefited  
18 your client.

19 MS. ANDERSON: And the third element, are the  
20 bills reasonable. Because they have to be able to  
21 show all three. And he knows as a gas guy whether  
22 it's reasonable or not for a bill to read \$3200 a

1 year for this ice house. He's been in it. He  
2 knows.

3 If we can lay the proper foundation, he  
4 should be able to say so. Is it reasonable; is it  
5 not reasonable.

6 JUDGE GILBERT: Yeah.

7 MS. ANDERSON: A guy who crunches numbers in  
8 the office doesn't know if that's reasonable. A  
9 guy who does gas for a living does know if it's  
10 reasonable.

11 JUDGE GILBERT: I'm not sure that I even agree  
12 with that on the merits of the argument; but  
13 whether or not I do, I think, is irrelevant to why  
14 I'm not going to permit it.

15 I'm not going to permit it because  
16 Mr. Asim had his case in chief on that issue. I  
17 only reopened this -- or I'm sorry. I did not  
18 reopen it. I only extended it for the purpose of  
19 attacking the argument or the assertion, I should  
20 say, that a tappet occurred and that it benefited  
21 Mr. Asim, and that's what this witness will  
22 address.

1                   And if he's going to address  
2   reasonableness of bill, he needs to -- he's not  
3   going to get it into the record because I won't  
4   permit in.

5       MS. ANDERSON:    So you're making a finding  
6   now --

7       JUDGE GILBERT:   I'm not making --

8       MS. ANDERSON:    -- that they've already proven  
9   their case to that element, that the bill is  
10   reasonable?

11      JUDGE GILBERT:   No.  Obviously, I'm not making  
12   any finding.

13      MS. ANDERSON:    You are, if you're not allowing  
14   me to even talk about it.

15      JUDGE GILBERT:   Mr. Asim made his case.  
16   Whatever is there is there.

17                   Okay.  Let's look at actual dates in the  
18   calendar instead of this just saying ten and five.

19                   All right.  Let's start counting from  
20   tomorrow.  Okay.  Serve your discovery by the 11th.  
21   Have I counted correctly?

22      MS. ANDERSON:    I thought the 12th was -- I

1 don't care. It doesn't matter.

2 MR. MC CARTHY: That's okay. March 17th.

3 JUDGE GILBERT: One, two, three, four, five,  
4 six, seven, eight -- ah, think she's right. She's  
5 right. Make it the 12th sometime. I'm sorry.  
6 Okay.

7 So 3/12. Okay. Then counting ten from  
8 that, three -- 27th; am I correct?

9 MS. ANDERSON: March 19th is the date for  
10 objections, correct?

11 JUDGE GILBERT: No.

12 MR. MC CARTHY: No, that's for responses.  
13 We're talking about the response date.

14 JUDGE GILBERT: Yeah. You missed a step.

15 MS. ANDERSON: Oh, I'm sorry. I missed a step.  
16 You're right.

17 JUDGE GILBERT: Yeah. 27th for responses.  
18 Objections would have to be made by the 3rd. Call  
19 me on the 4th.

20 Okay. Then if there are objections, we  
21 will argue those and I'll rule orally the following  
22 week.

1 MS. ANDERSON: So we'll set that date on the  
2 phone --

3 JUDGE GILBERT: Yeah.

4 MS. ANDERSON: -- or are we going to set that  
5 date now?

6 JUDGE GILBERT: Yeah. Okay.

7 MR. MC CARTHY: What date was that, you said  
8 4th?

9 JUDGE GILBERT: Yeah. Well, during that week  
10 sometime from the 8th --

11 MR. MC CARTHY: Okay.

12 JUDGE GILBERT: We'll decide that on 4th, if  
13 need be --

14 MR. MC CARTHY: Okay. Right.

15 JUDGE GILBERT: -- if there are objections to  
16 the adequacy of the discovery responses. So we'll  
17 find a mutually convenient time somewhere between  
18 the 8th and the 12th.

19 If there are no objections, let's look  
20 at -- since you guys prefer Fridays, look toward  
21 Friday, April 19th as a hearing date.

22 MS. ANDERSON: I've got a trial that day at

1 9:30. If we can do it in the afternoon, I could do  
2 it.

3 JUDGE GILBERT: You sure you can do both in the  
4 same day?

5 MS. ANDERSON: Yeah, I don't think the trial --  
6 it's a guardianship, so I should be done by 12:00.

7 JUDGE GILBERT: I mean, it doesn't have to be  
8 the 19th if that's not going to work for you.

9 MS. ANDERSON: It's just I couldn't do it in  
10 the morning.

11 JUDGE GILBERT: Well, I don't mind it being in  
12 the afternoon.

13 MR. MC CARTHY: I don't mind it being the  
14 afternoon.

15 JUDGE GILBERT: Okay. So probably do it at  
16 1:00 on Friday.

17 MR. MC CARTHY: Okay.

18 JUDGE GILBERT: All right.

19 And if it turns out we can't do it then,  
20 I'm hoping to be on vacation the following week.  
21 So we'd have to look at the week after that  
22 beginning on the 29th. And if you wanted again to



1 do a Friday, we'd be looking at May 3rd.

2 Okay. So we're shooting for the 19th.

3 If necessary, we would next look at May 3rd,  
4 assuming again that you want to do this on a  
5 Friday.

6 MR. MC CARTHY: Okay.

7 JUDGE GILBERT: Okay. So I'll just repeat it  
8 all in crisp form here so it's clear on the record:

9 Discovery served by close of business on  
10 March 12th.

11 Responses served by close of business on  
12 the 27th.

13 Any objections to the adequacy of the  
14 responses by the close of business on April 3rd.

15 We'll have a telephone conversation on  
16 April 4th at which we will either set a date to  
17 hear argument on the objections during the week of  
18 April 8th or we will set -- we will confirm that  
19 we're having a hearing at 1:00 p.m. on April 19th.

20 And, hopefully, the scope of discovery  
21 has been made clear; the order of proceeding has  
22 been made clear; the apportionment of the burden of

1 proof has been made clear.

2 Are you both all right with electronic  
3 service of discovery and discovery responses?

4 Can you both do that?

5 MS. ANDERSON: (Nodding.) I'm fine.

6 MR. MC CARTHY: I'm fine, too. Do you need it  
7 in Word?

8 MS. ANDERSON: I can.

9 JUDGE GILBERT: Okay. Don't serve them on me  
10 and you don't need to file them with the  
11 Commission.

12 MR. MC CARTHY: Right.

13 JUDGE GILBERT: Okay?

14 So I don't want to see them unless  
15 there's an argument about them, because I make a  
16 point of not trying to look at extra record  
17 evidence.

18 So objections, obviously, have to be  
19 served on me. I shouldn't say served on me, but I  
20 want a copy, and that also has to be filed with the  
21 Commission.

22 And do you both have my E-mail?

1 MR. MC CARTHY: No.

2 JUDGE GILBERT: DGilbert, one word, at

3 state-dot.

4 (Discussion off the record.)

5 MR. MC CARTHY: State.il-dot --

6 JUDGE GILBERT: Icc.state.il.us.

7 MR. MC CARTHY: I think it's dot, too.

8 JUDGE GILBERT: Il.us.

9 JUDGE GILBERT: All right.

10 Well, I've botched that.

11 Dgilbert@icc.state.il.us.

12 Thank you. All right.

13 And you both have my direct line?

14 MS. ANDERSON: I don't know if I do or not.

15 JUDGE GILBERT: 814-6077.

16 MS. ANDERSON: I'm sorry. 814 --

17 JUDGE GILBERT: 6077.

18 MR. MC CARTHY: Is there any good time to call?

19 During the day? Okay.

20 JUDGE GILBERT: All right.

21 Anything else?

22 MS. ANDERSON: (Shaking head.)

1 JUDGE GILBERT: Okay.

2 So I will hear from you on the 4th, I  
3 hope.

4 MR. MC CARTHY: Okay.

5 (Whereupon, said hearing was  
6 continued to April 19, 2002  
7 at 1:00 p.m.)

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